

## Articles

# Bringing “Justice” Home? Bosnians, War Criminals and the Interaction between the Cosmopolitan and the Local

By *Olivera Simic*\*

### Abstract

One day before the historic trial against Radovan Karadžić was due to begin, Biljana Plavšić, a former Bosnian Serb leader, was released from prison after serving two-thirds of an 11-year sentence for war crimes. She flew in from Sweden to Belgrade, where she was welcomed by the Prime Minister of Republika Srpska. While Plavšić was on her way home, more than a hundred representatives of Bosnian nongovernmental organizations were heading from home to the Hague, to be present for the beginning of the Karadžić trial. Drawing on cases of returning war criminals, this article argues that similar to Bosnian citizens and war criminals who are commuting in different directions, cosmopolitan and local forms of justice in Bosnia and Herzegovina are also progressing in opposite destinations.

### A. Introduction: Welcomes and Farewells

*“We will not live quietly till we see justice.”<sup>1</sup>*

On 24 October 2009, the civil society groups, *Mothers of Srebrenica* and *Former War Prisoners Bosnia and Herzegovina* organized a trip to the Hague for the representatives of 21 local nongovernmental organizations (NGOs). Together with approximately 160 citizens of Bosnia and Herzegovina (BH), they departed from Sarajevo in three buses, in order to be present for the first day of trial of the man who, prior to his arrest, had been the most wanted war criminal, Radovan Karadžić.<sup>2</sup> As a representative of *Mothers of Srebrenica*,<sup>3</sup> Munira Subašić, explained:

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<sup>1</sup>Hasan Nuhanovic, a survivor of the Srebrenica massacre in the following movie: *A CRY FROM THE GRAVE* (Antelope Productions, Ryninks Films & WNET Channel 13 New York Apr. 4, 2000).

<sup>2</sup>*Majke Srebrenice optuovale u Hag!* (Mothers of Srebrenica depart for the Hague!), MONDO INFO, Oct. 24, 2009, available at: [www.mtsmondo.com/news/world/text.php?vest=150620](http://www.mtsmondo.com/news/world/text.php?vest=150620) (last accessed: 12 July 2011).

We are going there to show Europe and the world that we are still here, that we are still waiting for truth and demanding justice...that the trial to [sic] Karadzic has to be lawful, so it does not happen that they [the ICTY] try him as they tried Milosevic, so he dies at the end and justice dies too.<sup>4</sup>

While the representatives of the local NGOs were on their way to the Hague, Biljana Plavšić, a former Bosnia Serb leader was released from prison after serving two-thirds of an eleven-year sentence for war crimes. Once released, Plavšić flew from Sweden to Belgrade on a Republika Srpska airplane, under the approval of its Prime Minister, Milorad Dodik.<sup>5</sup> Upon arrival at Belgrade airport, Plavšić was welcomed by Dodik, who did not hide how happy he was to see his friend had been released from prison. Dodik reportedly stated: “She went [to the Hague] voluntarily and I was the one who said goodbye to her, and I think it is my human obligation to welcome her as well.”<sup>6</sup>



Figure 1: Biljana Plavšić strolling through Belgrade with Milorad Dodik<sup>7</sup>

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<sup>3</sup> A civil society group of survivors of the Srebrenica genocide.

<sup>4</sup> See MONDO INFO, *supra* note 2.

<sup>5</sup> B92, *Milorad Dodik: Docekao sam Biljanu Plavsic iz moralnih razloga* (Milorad Dodik: I Welcomed Biljana Plavsic for Moral Reasons), SEEBIZ, Oct. 28, 2009, available at: [www.seebiz.eu/hr/politika/milorad-dodik-docekao-sam-biljanu-plavsic-iz-moralnih-razloga,59662.html](http://www.seebiz.eu/hr/politika/milorad-dodik-docekao-sam-biljanu-plavsic-iz-moralnih-razloga,59662.html) (last accessed: 12 July 2011).

<sup>6</sup> *Id.*

<sup>7</sup> Gordana Katana *Biljana Plavsic na slobodi: U slobodu doletjela Dodikovim avionom* (Biljana Plavsic in Freedom: In Freedom Arrived by Dodik’s Airplane) OSLOBODENJE, Oct. 27, 2009, available at:

This was not the first time that one of the highest-ranking governmental representatives in BH had welcomed a newly released and high profile war criminal. In 2006, the day after his release, Naser Orić, a leader of Bosniak military forces who had been charged for war crimes before the International Criminal Tribunal for Former Yugoslavia (ICTY), was welcomed home by Sulejman Tihić, the former Bosniak member of the tripartite BH presidency. To celebrate his release, Tihić organized a reception for Orić in the capital of BH and at the government residence.<sup>8</sup> Only a few months after his acquittal, on 3 October 2008, Orić was arrested in Sarajevo and sentenced to two years in prison for racketeering.



Figure 2: The President of Presidency BH welcomes Srebrenica war commandant: Tihić congratulates Orić on his “courage and persistence’ during his ordeal.”<sup>9</sup>

While efforts embedded in the establishment of the ICTY are being made on behalf of the international community in order to deliver justice and to assist the reconciliation process amongst Bosnians, cases such as Orić’s and Plavšić’s seem to contradict them. This article explores the challenges of international criminal justice in establishing the truth and delivering justice by drawing on these two case studies. By revealing the practical ripples of international criminal justice in BH society, this article critically examines the promise and failure of the law to achieve a common history necessary for peaceful co-existence of

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<http://www.oslobodjenje.ba/index.php/flash/images/Dokumenti/index.php?id=3387> (last accessed: 13 July 2011).

<sup>8</sup> Press release, *OHR-BiH Media Round-Up* (Office of the High Representative and EU Special Representative-OHR), Jul. 8, 2006, available at: [www.ohr.int/ohr-dept/press/bh-media-rep/round-ups/default.asp?content\\_id=37620](http://www.ohr.int/ohr-dept/press/bh-media-rep/round-ups/default.asp?content_id=37620) (last accessed: 12 July 2011).

<sup>9</sup> S.R., *Tihic cestitao Oriću na hrabrosti i izdržljivosti* (Tihić congratulates Orić on his courage and ordeal), OSLOBODJENJE, Jul. 7, 2006.

Bosnian citizens. Although, the UN Security Council established the ICTY believing that prosecuting individuals who committed war crimes would contribute to "the restoration and maintenance of peace"<sup>10</sup> by providing some form of closure, it seems that the BH government and its citizens lack trust in, and respect for the processes of the international criminal justice system. Though different societies have distinct notions of what is fair and right, it is vital that some form of justice is delivered in order to achieve a sustainable peace.<sup>11</sup> This article is a nuanced reading of the complexities of seeking, delivering and understanding socially and culturally constructed notions of justice, which seem to be in startling contrast to the ICTY's formal cosmopolitan justice. It is an insight into the Bosnian people affected by the armed conflict and the ways in which they experience mechanisms designed to address their past grievances.

The article begins by a review of local and international on-line newspapers and reports, survivors' statements, case studies and trial excerpts, in order to read and interpret Orić's and Plavšić's case in the context of post-conflict ethnic narratives. In so doing, it analyzes starkly opposite views with respect to the arrest and subsequent release of Orić and Plavšić by Bosniaks and Serbs in BH. The article then situates these narratives within the scholarship of transitional justice. Drawing on the cases of Orić and Plavšić, this piece illustrates the limits of law, and suggests that as long as war criminals are welcomed by the BH presidency and Bosnian citizens as war heroes, international criminal justice fails in its translation to local justice.

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<sup>10</sup> See United Nations, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991: Updated Statute of The International Criminal Tribunal for the Former Yugoslavia, Sept. 2009; Annex: Security Council Resolution (S.C. Res.) 1534, U.N. Doc. S/RES/1534 (Mar. 26, 2004), available at: <http://www.unhcr.org/refworld/docid/4113684c4.html> (last accessed: 13 July 2011).

<sup>11</sup> Carrie Gustafson, *International Criminal Courts: Some Dissident Views on the Continuation of War by Penal Means*, 21 HOUSTON JOURNAL OF INTERNATIONAL LAW 51-84 (1989); ANDREW RIGBY, JUSTICE AND RECONCILIATION: AFTER THE VIOLENCE 13 (2001).

**B. Naser Orić: Welcomed in Sarajevo as a War Hero<sup>12</sup>**

*"Justice is finally done."<sup>13</sup>*



Figure 3: Young Bosnian man holding a placard with imprinted word 'hero' on Orić's portrait at the Sarajevo airport.<sup>14</sup>

In 2006, Naser Orić, a former Bosnian army commander was found guilty of failing to prevent war crimes, and sentenced to two years in prison by the ICTY. On 3 July 2008, he was released from prison acquitted from the charges brought against him due to a lack of evidence that he bore criminal responsibility. Orić was the first and only indictee for crimes against the Serb population in Srebrenica. He was the senior commander of Bosnian Muslim forces in eastern BH from 1992 until 1995, when genocide in the Srebrenica enclave was committed by the Serb army. Between 24 September 1992 and 20 March 1993, members of the military police under Orić's command detained a number of Serbs in Srebrenica who were subjected to torture, serious abuse and injuries, which in some cases resulted in death. At the time of the trial, the chief prosecutor, Carla Del Ponte, demanded an eighteen-year prison term. She claimed that Orić was the warlord individually responsible for the crimes of wanton destruction of cities, active involvement in the

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<sup>12</sup> *Orić dočekan u Sarajevu kao heroj* (Orić in Sarajevo as a hero), MONDO INFO BETA, Jul. 4, 2008, available at: [www.mtsmondo.com/news/world/text.php?vest=102199](http://www.mtsmondo.com/news/world/text.php?vest=102199) (last accessed: 13 July 2011).

<sup>13</sup> *Id.* One of the Orić's comrades welcomes him at the airport of Sarajevo with these words.

<sup>14</sup> *Naser Orić Welcomed Home: Thousands welcome Bosnian defender of Srebrenica after release from UN Tribunal*, BNET PRESS, Jul. 5, 2008, available at: <http://srebrenica-genocide.blogspot.com/2006/07/naser-oric-welcomed-home-new-lawsuit.html> (last accessed: 13 July 2011).

attacks during which such destruction was caused, instigating the commission of crimes and aiding and abetting the perpetrators of these crimes.<sup>15</sup>

The ICTY judges determined that grave crimes had been committed against Serbs in the detention facilities in Srebrenica. However, they decided on a lenient sentence because of the extenuating circumstances, since the inexperienced commander, twenty-five at the time, had not been in his post long. The judges declared that:

The proof that crimes have occurred is not sufficient to sustain a conviction of an individual for these crimes. Criminal proceedings require evidence establishing beyond reasonable doubt that the accused is individually responsible for a crime before a conviction can be entered.<sup>16</sup>

Appeals Judge Wolfgang Schomburg declared that "only vague and unconvincing evidence" was produced to establish Orić's responsibility, and although he was found "undoubtedly guilty,"<sup>17</sup> in order to obtain a conviction it had to be shown beyond reasonable doubt that the defendant was responsible as an individual for the crimes of which he or she has been accused. The ICTY judges thus found Orić not liable for his troops' destruction of about fifty villages with Serb majority populations in the vicinity of the enclave. Although thousands of Serbs fled the region after their houses were razed, Orić's defense team claimed that he had no control over his troops. The judges also dropped several counts of pillage listed in the original indictment.<sup>18</sup>

Upon his acquittal on charges of war crimes and arrival from the detention center at the Hague, Orić met with Tihčić, a member of the BH Presidency at the time, and stated, "I had defended my homeland and my people from destruction, and at the court I told and proved the truth."<sup>19</sup> Tihčić welcomed Orić to the presidential cabinet with the following words:

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<sup>15</sup> Prosecutor v. Naser Orić, Case No. IT-03-68-T, Appeal Judgment, Int'l Crim. Trib. for the Former Yugoslavia (ICTY) Jun. 30, 2006, available at: <http://www.unhcr.org/refworld/docid/48ad36912.html> (last accessed: 13 July 2011); see Article 7(1) of the Statute of the Tribunal.

<sup>16</sup> Prosecutor v. Naser Orić, Case No. IT-03-68-A, Appeal Judgment, ICTY Jul. 3, 2008, available at: <http://www.unhcr.org/refworld/docid/48ad3a4d2.html> (last accessed: 13 July 2011).

<sup>17</sup> *Id.*

<sup>18</sup> Orić was found not guilty of failure to discharge his duty as a superior to take necessary and reasonable measure to prevent or punish the occurrence of acts of wanton destruction of cities, towns, or villages. See *Prosecutor v. Naser Orić*, *supra* note 15, at para. 782.

<sup>19</sup> *Tihčić cestitao Oricu na hrabrosti i izdržljivosti* (Orić congratulated), *supra* note 9.

I am glad that you are here with us again, in Bosnia and Herzegovina. Mothers, sisters, wives and families of people killed in Srebrenica see their loved ones they still search for, in you. This is not just the return of their belief in justice, but also a hope that they will find out the truth about their loved ones and bury them with dignity.<sup>20</sup>

Although Orić was found guilty for not preventing the torture and killing of Serbs, Tihčić welcomed him to the presidential cabinet that purports to represent all people in BH. Orić was praised as a war hero wrongly accused for something he had not done. His sudden release from detention was mistakenly interpreted by Tihčić and a majority of Bosniaks as evidence of his innocence. Orić's meeting with a member of the BH presidency was reported by major TV stations and press in the country, and sparked a number of welcomes spontaneously organized by Bosniak citizens. One of these welcomes was attended by Munira Subašić, a representative of *Mothers of Srebrenica*. She brought flowers for Orić, but was disappointed that she missed seeing him: "I did not see my dear son."<sup>21</sup> As Tihčić stated, Orić is a personification of the "loved ones" who Bosniaks lost in the Srebrenica massacre, explaining why Subašić regarded him as her "dear son" and a war time hero, rather than a warlord.

Orić's release had different impacts on people in BH, depending on whether they were Bosnians or Serbs. On the one hand, the public reaction of Bosniaks to Orić's arrest, and punishment can only be described as one of resentment, anger, and a reaffirmation that victims of genocide should not be accused of war crimes since their actions are only defensive or reactive.<sup>22</sup> Bosniaks did not expect that Bosniak generals and members of the Bosnian army would be prosecuted for war crimes. In addition to the feelings of the general Bosniak population, survivors of the Srebrenica genocide were particularly bitter about the indictment of Orić and claimed that his arrest was "shameful" because he was "not a war criminal, but a man who defended his own people."<sup>23</sup> The actions of Bosniaks during the war, including those of Orić, were perceived as defensible reactions to Serbs

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<sup>20</sup> *Id.*

<sup>21</sup> Husein Orahovac, *Hiljade ljudi na dočeku Nasear Orica u Sarajevu* (Thousands of people welcome Naser Orić in Sarajevo) 3683 DNEVNI AVAZ, Jul. 2, 2006, available at ICD Online, at <http://www.idoconline.info/digitalarchive/public/index.cfm?fuseaction=serve&ElementId=246487> (last accessed: 13 July 2011).

<sup>22</sup> JELENA SUBOTIĆ, *HIJACKED JUSTICE: DEALING WITH THE PAST IN THE BALKANS* 129 (2009).

<sup>23</sup> Amra Kebo, *Regional Report: Bosnian Fury at Orić Arrest*, INSTITUTE FOR WAR AND PEACE REPORTING 14-18 (2003).

attacks and not as war crimes. Such views are of concern and present an obstacle for the reconciliation of Bosniaks and Serbs. As long as Bosniak people identify themselves only as victims, and Serbs are seen only as perpetrators, reconciliation seems impossible. There is a need for mutual recognition of past wrongdoings and victimhood of all sides implicated in a BH war saga, in order to move forward.

While some Bosniaks were excited by Orić's release, it provoked bitterness amongst Serbs in Bosnia. The majority of Serbs believe that the ICTY administers justice in a biased manner in that it brings mostly Serbs to trial, which they perceive demonstrates that the court is anti-Serb, rather than an impartial court of justice.<sup>24</sup> By arresting Orić and bringing him to trial, Serbs thought that the ICTY had finally showed its readiness to bring non-Serbs to account. As Jovan Nikolić, a Serb from Bratunac who had witnessed crimes by Muslim forces in the village of Kravica, stated: "I cannot say that Orić was personally involved, but they [the war crimes] were committed by the army under his command. This is why his arrest comes as relief to many local Serbs."<sup>25</sup>

Despite initial excitement of Serbs at the indictment of Orić and at the ICTY's perceived new impartiality, this sentiment did not last long, as the sudden release of Orić and his lenient sentence revived claims that the ICTY is an anti-Serb body. Bosnian Serbs as well as Serbs from neighboring Serbia reacted harshly to the release. The former Prime Minister of Serbia at the time stated that "The Hague has become an accomplice to Orić's crimes,"<sup>26</sup> and the president of the *Association of Former War Prisoners of the Republika Srpska* said that "the Hague Tribunal and international community offended the Serbian people and its victims."<sup>27</sup> Similarly, Bruno Vekarić, spokesman for Serbia's war crimes prosecutor's office, reported that "the decision will not contribute to reconciliation...but [will instead] support those who insist on "selective justice."<sup>28</sup> The mistrust of the ICTY is also seen by the response of alleged Serb victims of Orić's war crimes. A Serb mother from Srebrenica, Ivanka Rakić, who lost her son in 1992 during the Bosnian army attack led by Orić's forces,

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<sup>24</sup> ANTONIO CEASSESE, INTERNATIONAL CRIMINAL LAW 337 (2003); Brady Hall, *Using Hybrid Tribunal as Trivias: Furthering the goals of Post-Conflict Justice while Transferring Cases from the ICTY to Serbia's Domestic War Crimes Tribunal*, 13 (39) MICHIGAN STATE JOURNAL OF INTERNATIONAL LAW 39-61 (2005); DIANE F. ORENTLICHER, SHRINKING THE SPACE FOR DENIAL: THE IMPACT OF THE ICTY IN SERBIA (2008).

<sup>25</sup> Kebo, *supra* note 23.

<sup>26</sup> *Tanjug, Kostunica: Tribunal saucesnik Oricevih zlocina* (Kostunica: The ICTY accomplice in Orić's crimes), Jul. 3, 2008, [www.rtv.rs/sr\\_lat/hronika/kostunica:-tribunal-saucesnik-oricevih-zlocina\\_68950.html](http://www.rtv.rs/sr_lat/hronika/kostunica:-tribunal-saucesnik-oricevih-zlocina_68950.html) (last accessed: 13 July 2011).

<sup>27</sup> *Oslobodjen krvnik naser Oric!* (Murderer Orić is free!), GLAS JAVNOSTI, Jul. 4, 2008, available at: [www.glas-javnosti.rs/clanak/tema/glas-javnosti-04-07-2008/oslobodjen-krvnik-naser-oric](http://www.glas-javnosti.rs/clanak/tema/glas-javnosti-04-07-2008/oslobodjen-krvnik-naser-oric) (last accessed: 13 July 2011).

<sup>28</sup> *Serbs Angered by ICTY overturn of Orić conviction*, SETIMES.COM, Jul. 3, 2008, available at: [http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/features/setimes/features/2008/07/04/feature-01](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/07/04/feature-01) (last accessed: 13 July 2011).



commented on his release: "The ICTY has forgiven Naser Orić for killing more than 3000 Serbs, among them the killing of my son Nenad... all I can do now is to speak, to heal my soul and to tell the world what has happened."<sup>29</sup> Rakić refers to the infamous "bloody Christmas" massacre of January 1993, in which Naser Orić's forces were accused of destruction and pillage in the village of Kravica.<sup>30</sup> They were also accused by Serbs of having killed 43 Bosnian Serbs.<sup>31</sup>

Most disturbing for Serbs was the leniency of Orić's sentence. The Serbs perceived the length of his sentence as indication that he was not sentenced at all for failing to take reasonable measures to prevent the torture and killing of Serb detainees in Srebrenica. The length of Orić's sentence became an important indicator for Serbs that justice had not been served. As Subotic argues, for many survivors ICTY sentences have been "shockingly low."<sup>32</sup> Igor Gajic, editor-in-chief of the Republika Srpska-based magazine *Reporter* stated, "This is outrageous. You get more than that for a car crash with no human casualties. This will only add to the feeling of distrust Serbs already have for the tribunal."<sup>33</sup>

Indeed, it remains a challenge for the ICTY to persuade victims that the quality of justice is not proportional to the length of a sentence.<sup>34</sup> Not only was Orić sentenced to just two years in prison and immediately released from the Hague detention center for time already served, he was also acquitted of direct involvement in the murder and cruel treatment of Serbs. This decision served to further divide Bosniak and Serb ethnic communities. While Orić's release was celebrated by many Bosniaks, it provoked mourning and bitterness for many Serbs. The support of Orić by Bosniak political elites led Serbs to accuse Bosniaks of "extremism"<sup>35</sup> and of fueling ethnic hatred and denial. Certainly, as long as political elites celebrate war criminals as war heroes, it cannot be expected that local people will take responsibility for past wrongdoings.

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<sup>29</sup> S. Durmanovic, *NOVI REPORTER* (online forum), Jul. 2, 2006, available at: <http://www.lopare.net/forum/politika-i-ekonomija/5132-ispovesti-srpskih-majki-srebrenice.html> (last accessed: 13 July 2011).

<sup>30</sup> *Prosecutor v. Nasser Orić*, Case No. IT-03-68-T, *supra* note 15, at para. 8.

<sup>31</sup> *Glas Javnosti*, *Tadic: Svet mora da zna za srpsku patnju* (Tadic: The World Must Know for the Serbian Suffering), NASLOVI.NET Jan. 8, 2006.

<sup>32</sup> SUBOTIĆ, *supra* note 22, at 132.

<sup>33</sup> Merdijana Sadovic, *Orić Released Following Conviction*, INSTITUTE FOR WAR AND PEACE REPORTING Tribunal update no. 459 (2006).

<sup>34</sup> Nina H.B. Jorgensen, *The Genocide Acquittal in the Sikirica Case Before the International Criminal Tribunal for the Former Yugoslavia and the Coming of Age of the Guilty Plea*, LEIDEN JOURNAL OF INTERNATIONAL LAW 389 (2002).

<sup>35</sup> O.V., *Čavić optužio SDA da podstice ekstremizam* (Cavic Accused SDA of Inciting Extremism), 21379 OSLOBODENJE 03, Jul. 29, 2006, available at ICD online at: <http://www.idoconline.info/digitalarchive/public/index.cfm?fuseaction=serve&ElementId=253824> (last accessed: 13 July 2011).

**C. Biljana Plavšić: Welcome Ms President Plavsic!**<sup>36</sup>

*“She behaves as if she has arrived from an Oscar nomination all happy and delightful. I wish [sic] her to dream about her victims all her life.”*<sup>37</sup>

A former president of the Republika Srpska and professor of biology, 79-year-old Biljana Plavšić justified war crimes against Bosniaks and Croats by describing them as a “natural phenomenon.” She was also one of the most wanted war criminals that the ICTY was after. She is the only woman who has been charged by the ICTY, and was the first Bosnian leader to voluntarily surrender and plead guilty to war crime charges. As a result of her hard-line nationalism and hate speech against Muslims and Croats, she was known as the “Serbian Iron Lady,” and was a dear friend of criminal Željko Ražnjatović Arkan, who called her the “Serb queen.” Plavšić acknowledged that the Bosnia Serb leadership had conducted a campaign of ethnic cleansing and invited Serbian paramilitaries to assist in ethnic cleansing. She was a close ally of Radovan Karadžić and Momčilo Krajišnik and was part of the ethnic cleansing campaign in BH. It was established that as a member of the Bosnian Serb leadership, Plavšić had “disregarded reports of widespread ethnic cleansing and publicly rationalized and justified it.”<sup>38</sup> For these actions, the prosecution indicted Plavšić on two counts of genocide and complicity in genocide and six counts of crimes against humanity.<sup>39</sup> Plavšić voluntarily surrendered to the ICTY, and although she initially pleaded not guilty before the Trial Chamber in January 2001, before the trial commenced in October 2002, she pleaded guilty to one count of persecution—crime against humanity. As a consequence of Plavšić’s acceptance of responsibility as a leader for the grave crimes committed by others, the prosecution dropped the remaining seven charges, including the genocide charges.<sup>40</sup>

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<sup>36</sup> The front page title in the daily newspaper *Glas Srpske*, on the day of Plavšić’s release from the prison, Oct. 29, 2009, available at: <http://www.glassrpske.com/> (last accessed: 13 July 2011).

<sup>37</sup> Nusreta Sivac, *A Former Victim of War-Time Rape Said to the Press About Release of Biljana Plavsic*, CAFÉ MONTENEGRO, Feb. 26, 2009, available at: <http://www.cafemontenegro.com/index.php?group=24&news=93981> (last accessed: 13 July 2011).

<sup>38</sup> Ralph Henham, *The Ethics of Plea Bargaining in International Criminal Trials*, LIVERPOOL LAW REVIEW 213 (2005).

<sup>39</sup> Prosecutor v. Plavsic, Case No. IT-00-39 & 40/1-S, Sentencing Judgment, ICTY Feb. 27, 2003 [hereinafter “Prosecutor v. Plavsic (Sentencing Judgment)”), at para. 1 & 5, available at: <http://www.unhcr.org/refworld/docid/3e5f717a4.html> (last accessed: 13 July 2011).

<sup>40</sup> Prosecutor v. Plavsic, Case No. IT-00-39&40/1-S, Decision Granting Prosecution’s Motion to Dismiss Counts 1, 2, 4, 5, 6, 7 and 8 of the Amended Consolidated Indictment, ICTY Dec. 16, 2002 [hereinafter “Prosecutor v. Plavsic (Motion to Dismiss) ”].

Plavšić stated in part:

I have now come to the belief and accept the fact that many thousands of innocent people were the victims of an organised, systematic effort to remove Muslims and Croats from the territory claimed by Serbs... Our leadership, of which I was a necessary part, led an effort which victimised countless innocent people... The knowledge that I am responsible for such human suffering and for soiling the character of my people will always be with me... This will, I hope, help the Muslim, Croat, and even Serb innocent victims not to be overtaken with bitterness, which often becomes hatred and is in the end self-destructive...<sup>41</sup>

Although Plavšić was not the first person accused of war crimes to plead guilty,<sup>42</sup> her guilty plea made headlines worldwide.<sup>43</sup> The former US Ambassador to the United Nations, Richard Holbrook, called Plavšić's plea a "historical event"<sup>44</sup> and the first prosecutor of Hague Tribunal, Richard Goldston, reportedly stated that it was a "big step forward."<sup>45</sup> Michael Bohlander described Plavšić's admission of guilt "the admittedly noble example of

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<sup>41</sup> Prosecutor v. Plavsic (Motion to Dismiss), *supra* note 40, at para. 520-22, 609-11.

<sup>42</sup> Prosecutor v. Milan Simic, Case No. IT-95-9/2-S, Sentencing Judgment, ICTY Oct. 17, 2002, available at: [http://www.icty.org/x/cases/milan\\_simic/tjug/en/sim-sj021017e.pdf](http://www.icty.org/x/cases/milan_simic/tjug/en/sim-sj021017e.pdf) (last accessed: 13 July 2011), at paras. 10-11; Prosecutor v. Jelusic, Case No. IT 95-10-T, Judgment, ICTY Dec. 14, 1999, available at: [http://www.icty.org/x/file/Legal%20Library/jud\\_supplement/supp10-e/jelusic.htm](http://www.icty.org/x/file/Legal%20Library/jud_supplement/supp10-e/jelusic.htm) (last accessed: 13 July 2011); Prosecutor v. Erdemovic, Case No. IT 96-22-T, Sentencing Judgment, ICTY Nov. 29, 1996, available at: <http://www.icty.org/x/cases/erdemovic/tjug/en/erd-ts961129e.pdf> (last accessed: 13 July 2011).

<sup>43</sup> Marlise Simons, *Ex-Bosnia Serb Leader Enters Guilty Plea in the Hague*, NEW YORK TIMES, Oct. 3, 2002, at A6, available at: <http://www.nytimes.com/2002/10/03/world/ex-bosnia-serb-leader-enters-guilty-plea-to-the-hague.html> (last accessed: 13 July 2011); Isabelle Wesselingh, *Former Bosnian Serb President admits Crimes Against Humanity*, AGENCE-FRANCE PRESSE, Oct. 2, 2002.

<sup>44</sup> B92, *Predaja Biljane Plavsic-istorijski dogadjaj* (Surrender of Biljana Plavsic- A Historical Event), B92.NET Jan. 12, 2001, available at: [http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=01&dd=12&nav\\_category=1&nav\\_id=19301](http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=01&dd=12&nav_category=1&nav_id=19301) (last accessed: 13 July 2011).

<sup>45</sup> B92, *Goldston-Predaja Plavsic veliki korak naprijed* (Goldston-Surrender of Biljana Plavsic, A Big Step Forward), Jan. 24, 2001, available at: [http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=01&dd=24&nav\\_category=1&nav\\_id=19934](http://www.b92.net/info/vesti/index.php?yyyy=2001&mm=01&dd=24&nav_category=1&nav_id=19934) (last accessed: 13 July 2011).

Biljana Plavšić's public remorse."<sup>46</sup> The prosecution welcomed the guilty plea as "an unprecedented contribution to the establishment of truth and a significant effort toward the advancement of reconciliation."<sup>47</sup> The prosecution further asserted that it is only through the establishment of truth about what occurred in BH that the fragile and vital process of reconciliation can begin, and suspicion, ethnic hatred, and civil unrest can be broken.<sup>48</sup> Punishing perpetrators is argued to be vital to help victims restore their sense of dignity, attain closure and enable them to restart new relationships with others.<sup>49</sup> As Jorgensen argues, acknowledgment of guilt has become even more significant for reconciliation than a finding of guilt.<sup>50</sup>

Although the original ICTY Statute and Rules of Procedure and Evidence made no specific provision for a plea agreement between parties, plea agreements have been presented to the ICTY, starting with the *Drazen Erdemovic* ["*Erdemovic*"] case.<sup>51</sup> The ICTY jurisprudence regarding plea agreements was consolidated in December 2001 with the establishment of the new Rule 62 on Plea Agreement. One of the key elements was that the Trial Chamber must always satisfy itself that a guilty plea is voluntary, informed and unequivocal.<sup>52</sup> The ICTY in the *Erdemovic* case asserted that the discovery of truth is "a fundamental step on the way to reconciliation."<sup>53</sup> The ICTY Trial Chamber took Plavšić's repentance seriously, stating that her acknowledgment of responsibility was significant and had a "positive impact on the reconciliatory process."<sup>54</sup>

Due to her repentance, the charges of genocide, which would have left her sitting in prison for fourteen additional years, were dropped once Plavšić admitted her guilt and responsibility for crimes against the Bosniak and Croat population. Her admission of guilt was a key factor in the Hague tribunal's decision to lower her sentence and drop the

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<sup>46</sup> Michael Bohlander, *Last Exit Bosnia—Transferring War Crimes Prosecution From the International Tribunal to Domestic Courts*, 14 (1) CRIMINAL LAW FORUM 59 (2003).

<sup>47</sup> Prosecutor v. Plavsic (Motion to Dismiss), *supra* note 40, at para. 24.

<sup>48</sup> *Id.* at para. 376.

<sup>49</sup> JEONG HO WON, PEACEBUILDING IN POST CONFLICT SOCIETIES: STRATEGY AND PROCESS (2005).

<sup>50</sup> Nina H.B.Jorgensen, *supra* note 34, at 406.

<sup>51</sup> Prosecutor v. Drazen Erdemovic, Case No. IT-96-22-A, Judgment, ICTY Oct. 7, 1997 [hereinafter "Prosecutor v. Erdemovic (1997)"].

<sup>52</sup> International Criminal Tribunal for the former Yugoslavia (ICTY), Statute of the ICTY, S.C Res. 827, U.N. Doc. S/RES/827 (May 25, 1993), at Rule 62, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/306/28/IMG/N9330628.pdf?OpenElement> (last accessed: 13 July 2011).

<sup>53</sup> Prosecutor v. Erdemovic (1997), *supra* note 51, at 21.

<sup>54</sup> Prosecutor v. Plavsic (Sentencing Judgment), *supra* note 39, at para. 81.

remaining charges. Had she not pled guilty, and taking all eight charges against her into account, Plavšić would likely have been sentenced to between twenty and twenty-five years in prison. Compared with the two-thirds of the eleven-year sentence that she actually served, it is apparent that the incentives for pleading guilty are significant, especially when crimes of such magnitude as genocide are involved.<sup>55</sup>

But has Plavšić told the truth? In January 2009, Plavšić reportedly stated that she had pled guilty in an attempt to have the remaining charges against her, including genocide, dropped.<sup>56</sup> Interviewed in Sweden, where she served her sentence, Plavšić had no fear or moral barrier to explain:

I sacrificed myself. I have done nothing wrong. I pleaded guilty to crimes against humanity so I could bargain for the other charges. If I hadn't, the trial would have lasted three, three-and-a-half years. Considering my age that wasn't an option.<sup>57</sup>

Plavšić admitted that she lied in order to get a lenient sentence. She did not repent honestly. Instead, Plavšić's confession appears to have been a consciously staged farce.<sup>58</sup> Following Plavšić's admission, Carla del Ponte, a former prosecutor with ICTY, asked that the ICTY abolish Plavšić's guilty plea, that Plavšić be required to show up again before the court and that the whole procedure be undertaken again.<sup>59</sup> However, not only was Plavšić not tried again, she was released a few months after her confession that she lied before the ICTY. She was released on 27 October 1999, having served two-thirds of her sentence because of her "good behavior." In his decision, Judge Patrick Robinson noted that Plavšić "had participated in the institution's walks and also occupied herself with cooking and baking."<sup>60</sup>

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<sup>55</sup> See Ralph Henham, *supra* note 38, at 220.

<sup>56</sup> Daniel Uggelberg Goldberg, *Bosnian war criminal: I did nothing wrong*, THE LOCAL SWEDEN'S NEWS IN ENGLISH, Jan. 26, 2009, available at: <http://www.thelocal.se/17162/20090126/> (last accessed: 13 July 2011).

<sup>57</sup> *Id.*

<sup>58</sup> Slavenka Drakulic, *The False Repentance of Biljana Plavsic*, EUROZINE, Sept. 23, 2009, available at: <http://www.eurozine.com/articles/2009-10-23-drakulic-en.html> (last accessed: 13 July 2011).

<sup>59</sup> Dženana Halimović, *Plavšićka povukla priznanje krivnje* [Plavšić has withdrawn her guilty plea], RADIO SLOBODNA EVROPA, Feb. 8, 2009, available at: <http://origin.slobodnaevropa.org/content/article/1381132.html> (last accessed: 13 July 2011).

<sup>60</sup> Amila Jasarevic, *From the Killing Fields to the Courthouse*, INDEPENDENT WORLD REPORT, Nov. 25, 2009, <http://www.independentworldreport.com/2009/11/from-the-killing-fields-to-the-courthouse/> (last accessed: 13 July 2011).

Despite an open admission from Plavšić that she staged the guilt, and a public statement circulated by *Women in Black*, Belgrade that "this [Plavšić release] should not be an act for celebration since Plavšić is a prosecuted war criminal."<sup>61</sup> When asked to comment on Plavšić, Dodik said, "I said everything about what I think about her sentence in the past. I believe it was unfair and of no relevance any more.... She needs to forget about it as soon as possible as we, and our friends, need too [*sic*]."<sup>62</sup> Such comments, as well as Dodik's welcome of Plavšić in Belgrade, triggered rage amongst Bosniaks. For instance, Nusreta Sivac, a victim of rape, reportedly stated,

The punishment does not make any sense. How otherwise to explain that after her release from prison, where she was because she admitted that she committed war crimes, she returns as a heroine.<sup>63</sup>

Mirsad Tokača, director of the Research and Documentation Center in Sarajevo who had testified at Plavšić's sentencing hearing and called her admission of guilt an "extremely courageous...and important gesture," was upset with Plavšić's withdrawal of her acceptance of guilt:

*The admission of guilt is a very important tool. However if admission is abused and even publicly admitted that it was a lie done in order that other charges for more serious war crimes are dropped and not because of sincere remorse, then I think the court has all reasons and tools to start the procedure from the beginning.*<sup>64</sup>

The Plavšić case study highlights that the process of reconciliation is one of the most challenging parts of peace building, in that it entails apology and forgiveness amongst

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<sup>61</sup> *Women in Black*, Belgrade, *Saopštenje za javnost povodom pustanja na slobodu Biljane Plavsic* (Public statement with regard to Biljana Plavsic's release from the prison), Oct. 23, 2009. On file with the author.

<sup>62</sup> Milorad Dodik's statement on the day Plavsic arrived at the Belgrade airport: N. Đević-B.Gagula, *Biljana Plavšić: Konačno sam na srpskoj zemlji* (Biljana Plavsic: I am finally on Serbian land), ANTIC.ORG-SNN, Oct. 27, 2009, available at: [www.mail-archive.com/sim@antic.org/msg47544.html](http://www.mail-archive.com/sim@antic.org/msg47544.html) (last accessed: 13 July 2011).

<sup>63</sup> Gordona Katana, *supra* note 7.

<sup>64</sup> Dženana Halimović, *supra* note 59.

people who may have committed atrocities in the past. Reconciliation is a process of mutual accommodation, requiring acknowledgment of past wrongdoings from perpetrators in exchange for forgiveness on behalf of victims.<sup>65</sup> However, can reconciliation occur when parties deny guilt, show no remorse and publicly admit they staged their plea? If, as Saxon argues, Plavšić sent a “powerful message about the legitimacy of the ICTY and its functions”<sup>66</sup> by pleading guilty, what message did she send by publicly stating seven years later that she faked her remorse in order to escape punishment?

#### D. The Ripples of International Criminal Justice: Reconciliation or Further Division?

*“This country is not finished, not complete... or as Milorad Dodik said, and is sadly true, this country is an indefinite temporary establishment’.”<sup>67</sup>*

After nearly four years of civil war, with thousands of people killed and over a million people having fled their homes, the war in BH was ended by the signing of the Dayton Peace Agreement (DPA) in 1995. The DPA created the foundations for a new Bosnian state inhabited by three ethnic groups who had lived side by side for decades, but who now seemed to be further apart than ever before. An important aspect of reconciliation was the establishment of the ICTY to assist people in reconciliatory processes and in building a peaceful future. However, thus far, the work of the ICTY has had both positive and negative impacts on the socio-political environment of BH. On the one hand, the ICTY is seen as “a motor for public debates”. On the other, it gives “support to nationalist discourses in some regions, which in most cases has led to continuing and reinforcing victimization.”<sup>68</sup> The former special advisor of Bill Clinton for Bosnia and Kosovo, James Dobbin, said that:

From these courts one would expect much more and for the astronomic amount of money that has been spent on the work of ICTY, the complete judicial system in Bosnia could be made excellent. You expect

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<sup>65</sup> JEONG HO-WON, *supra* note 49.

<sup>66</sup> Dan Saxon, *Exporting Justice: Perceptions of the ICTY Among Serbian, Croatian, and Muslim Communities in the Former Yugoslavia*, 4 JOURNAL OF HUMAN RIGHTS 561 (2005).

<sup>67</sup> Aleksandar Trifunovic, *Byka, Na Bosnjacima je najveća odgovornost* (The Biggest Responsibility is with the Bosniak People), OSLOBOĐENJE, Jan. 17, 2010. (Trifunovic is the director of Republika Srpska *Byka* Magazine).

<sup>68</sup> MARTINA FISCHER (ed.), PEACEBUILDING AND CIVIL SOCIETY IN BOSNIA-HERZEGOVINA. TEN YEARS AFTER DAYTON 391 (2006).

promotion of reconciliation from these courts and it would be much better to invest money in TRC.<sup>69</sup>

Similarly, Bašić emphasized that "justice delivered by the Hague is not sufficient to change the political climate of ethnic mistrust and hatred,"<sup>70</sup> while Geoffrey Nice stated that he has doubts as to whether the broadest of ICTY claims, such as reconciliation and an end to impunity, are being delivered.<sup>71</sup> Indeed, scholars who favor trials suggest that criminal accountability for war crimes provides more "just" outcomes for victims, creating a stronger basis for societal reconciliation.<sup>72</sup> Experience has shown that in countries where war crimes have not been prosecuted, the victims' thirst for justice tends to resurface years later to haunt their communities, reopening old wounds thought to be healed.<sup>73</sup> The trials should and can assist the efforts to restore the justice in a society where the rule of law has broken down or weakened as a result of conflict. As Teitel argues, transitional criminal justice holds an "independent potential for effecting transformative politics and "liberalising" change."<sup>74</sup>

On the other hand, experience has also shown that, in light of the number of people who have committed war crimes and need to be prosecuted, it is impossible to prosecute all war crimes due to a lack of human and technical resources. At the 2005 Conference on Truth and Reconciliation and Human Rights in Sarajevo, a representative of the Sarajevo War Crime Chamber said "the processing of war crimes can last for decades and can even wait for our children."<sup>75</sup> Indeed, it has never been possible to prosecute all offenders, and

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<sup>69</sup> BBC Serbian Archives, *Haški sud se nije isplatio* (The Hague Tribunal is Not Worth the Money Spent), BBC SERBIAN, OCT. 28, 2009, available at: [http://www.bbc.co.uk/serbian/news/2009/10/091028\\_dobbins\\_intw.shtml](http://www.bbc.co.uk/serbian/news/2009/10/091028_dobbins_intw.shtml) (last accessed: 13 July 2011).

<sup>70</sup> See FISCHER, *supra* note 68, at 358.

<sup>71</sup> Nidzara Ahemtasevic, *Geoffrey Nice: Local War Crime Trials May Aid Reconciliation*, BALKANINSIGHT, Sept. 16, 2008, available at: <http://www.balkaninsight.com/en/article/nice-local-war-crime-trials-may-aid-reconciliation> (last accessed: 13 July 2011).

<sup>72</sup> See for example, Brandon Hamber & Richard Wilson, *Symbolic Closure Through Memory, Reparation, and Revenge in Post-Conflict Societies*, 1 JOURNAL OF HUMAN RIGHTS 35-53 (2002); RUTI TEITEL, TRANSITIONAL JUSTICE (2000).

<sup>73</sup> Kingsley Chiedu Moghalu, *Reconciling Fractured Societies: An African Perspective on the Role of Judiciary Prosecutions*, in FROM SOVEREIGN IMPUNITY TO INTERNATIONAL ACCOUNTABILITY: THE SEARCH FOR JUSTICE IN A WORLD OF STATES (Ramesh Thakur & Peter Malcontent eds., 2004).

<sup>74</sup> RUTI G. TEITEL, *supra* note 72, at 6.

<sup>75</sup> Olivera Simic, *Medjunarodna konferencija o isitini i pomirenju* (International Conference on Truth and Reconciliation), in TEMIDA (2004).



BH is no exemption. Prosecutions can “only scratch the surface of culpability”<sup>76</sup> in the aftermath of mass killing, such as those committed in BH. Although war crime trials should “offer exemplary performance, classical retribution and commemoration,”<sup>77</sup> in the case of Orić and Plavšić, they offer more than that: the celebration and the failure of justice at the same time. Oscillating between international and domestic space, and between cosmopolitan and provincial justice, Orić and Plavšić are being negotiated and reinterpreted by the cosmopolitan and by the local, the former regularly threatening to collapse into hegemony and the latter into parochialism.<sup>78</sup>

Due to such different interpretations of justice, it seems that the ICTY is reinforcing the same divisions that divided the country during the war.<sup>79</sup> People in the Bosniak-Croat Federation are generally positive about the Tribunal, while the situation is opposite in the Republika Srpska. However, as Saxon argues, international tribunals like the ICTY should not be established with the expectation that they will be a panacea for the reconciliation and reconstruction of shattered societies.<sup>80</sup> The cases of Orić and Plavšić go beyond Saxon’s point by illustrating that international criminal justice sparked further national division and unrest, rather than promoting reconciliation between former warring parties. The ICTY’s capacity to deliver “justice,” establish the “truth” and foster reconciliation and nation-building is limited, and Plavšić’s case illustrates how the ICTY alone, without truthfulness and public acknowledgment of wrongdoing, can only further entrench the ethnic divisions that exist among the people of BH. Telling the truth and acknowledging wrongdoing by both sides is essential for peace building and reconciliation.<sup>81</sup> However, Plavšić publicly stated that she lied before the ICTY and had done “nothing wrong.” She was released from prison after serving only seven years for crimes against humanity, and was then welcomed by the highest Serb government official. She not only falsely repented, but dared to say in public that she lied before the ICTY to avoid serving time for the crime of genocide. And, significantly, she got away with it. She now lives peacefully in her three-bedroom apartment in the center of Belgrade, occasionally visiting Republika Srpska where she has family and friends.

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<sup>76</sup> Janine Natalya Clark, *The Limits of Retributive Justice. Findings of an Empirical Study in Bosnia and Herzegovina*, 7 JOURNAL OF INTERNATIONAL CRIMINAL JUSTICE 472 (2009).

<sup>77</sup> Ed Morgan, *Retributory Theater*, 3 (1) AMERICAN UNIVERSITY JOURNAL OF INTERNATIONAL LAW POLICY 1 (1988).

<sup>78</sup> GERRY SIMPSON, *LAW, WAR & CRIME* 53 (2007).

<sup>79</sup> KRISTEN CIBELLI & TAMY GUBEREK, *JUSTICE UNKNOWN, JUSTICE NSATISFIED? BOSNIAN NGOS SPEAK ABOUT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA*, A PROJECT OF THE EDUCATION AND PUBLIC INQUIRY AND INTERNATIONAL CITIZENSHIP OF TUFTS UNIVERSITY (2000).

<sup>80</sup> See Saxon, *supra* note 66, at 567.

<sup>81</sup> See Clark, *supra* note 76, at 335.

The example of Plavšić renouncing her guilty plea and Del Ponte's plea to prosecute her again illustrates law's limits. Law cannot compel people to *feel guilty* and remorseful, and it also, despite Del Ponte's plea, cannot try the same person twice for the same offence even if they lied to the court. Thus, if, as Simpson argues, cosmopolitan justice and "international tribunality" depend on the claims of local space, group identity and national self-assertion, the ICTY has reason to be concerned about its achievements.<sup>82</sup> He asserts that the modalities of international justice involve a continuous negotiation between the claims of the needs of the local and of the cosmopolitan.<sup>83</sup> It seems that in BH, cosmopolitan and locally perceived justice have different goals and political realities that are the result of lack of communication between the local and cosmopolitan.

Fifteen years after the DPA, what message does Plavšić's case send to the Bosnian public, to the survivors of Plavšić's regime? Possibly, that there is no political and moral will for reconciliation, and no credible public interethnic dialogue about past atrocities, responsibilities, reparations or truth telling. Certainly, there is no political consensus regarding the need or the manner to deal with the past. Without sincere apologies, and without genuine recognition of what happened, the past will continue to haunt the present and the cycle of vengeance will persist.<sup>84</sup> Meaningful reconciliation requires "justice as recognition," justice in terms of the public acknowledgement of injustices.<sup>85</sup> While the ICTY was established to achieve certain goals, such as justice and reconciliation, it is ultimately limited in doing so.

Although the ICTY has been able to prosecute war criminals, thereby providing a deterrent against war crimes, it has not been effective in promoting more than retributive justice. As Orić's case demonstrates, a release of a convicted war criminal from prison and perceived lenient sentence only fueled Serb beliefs regarding the impartiality and bias of the ICTY. Orić's welcome by the highest representative of the BH presidency has helped to reconstruct his identity as a victim of the ICTY who should be flattered for his "courage and ordeal." To the Serbs, this demonstrates Bosnian denial of Orić's culpability, which had been established by the ICTY. In contrast, amongst the Bosnian community, Orić's time in prison is now seen as unjust, and his lenient sentence has served as confirmation that he had done nothing wrong.

Thus far, there is no evidence that the ICTY has brought restorative justice to the Bosnian people, but rather, ICTY prosecutions appear to have deepened hostilities in an already

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<sup>82</sup> SIMPSON, *supra* note 78.

<sup>83</sup> *Id.* at 53.

<sup>84</sup> MICHAEL HENDERSON, FORGIVENESS: BREAKING THE CHAIN OF HATE 189 (2005).

<sup>85</sup> Clark, *supra* note 76, at 333.

divided society. At the same time, there is no evidence that Bosnians will ever be satisfied with the justice metered out by the ICTY – or with any justice process for that matter. After the initial celebrations that followed the arrest of Karadžić, the representative of *Mothers of Srebrenica* stated: “Even if they prosecute him [Karadžić], justice won’t be done. There is no justice and punishment that can bring back my children.”<sup>86</sup> Are expectations from tribunals, such as ICTY, too high, or does international criminal justice need to ask whether universal assumptions about the benefits of justice accord with what people think on the ground?<sup>87</sup> The frictions between global transitional justice mechanisms and local realities need to be acknowledged, since universal aspirations play out in radically different ways in various contexts.<sup>88</sup>

### E. Conclusion

*“Justice is good but a peaceful life would have been much better.”<sup>89</sup>*

This article explored complex relationships among narratives, institutions and BH citizens, and the distinction in interpreting a cosmopolitan assumption of justice at the local level. Such diverse views on justice produced “unintended consequences” that exclude possibilities for resolution of past grievances.<sup>90</sup> Although justice mechanisms have different criteria for success, they all aim to impact core values and change the way people behave and relate to one another and to their society.<sup>91</sup> However, as this article argues, welcomes by BH government and Bosnian citizens of returning war criminals from prison contradict and undermine attempts by the international community to deliver justice and change the values that are divided along ethnic lines. The two case studies draw attention to the realities of life on the ground and disillusionment with the idealized goals of international law. While some Bosnians wholeheartedly sent off their fellow citizens to bear witness to

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<sup>86</sup> Sarajevo-X, *U ponedjeljak počinje suđenje Karadžiću* (The Trial Against Karadzic Starts on Monday), SARAJEVO-X.COM, Oct. 25, 2009, available at: [www.sarajevox.com/svijet/clanak/091025020#komentari](http://www.sarajevox.com/svijet/clanak/091025020#komentari) (last accessed: 13 July 2011).

<sup>87</sup> ERIC STOVER & HARVEY WEINSTEIN, *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* (2004).

<sup>88</sup> ALEXANDER HINTON, *TRANSITIONAL JUSTICE: GLOBAL MECHANISMS AND LOCAL REALITIES AFTER GENOCIDE AND MASS VIOLENCE* 9 (2010).

<sup>89</sup> Aleksandar Hemon, *Genocide’s Epic Hero*, THE NEW YORK TIMES, Jul. 27, 2008, available at: <http://www.nytimes.com/2008/07/27/opinion/27hemon.html> (last accessed: 13 July 2011).

<sup>90</sup> HINTON, *supra* note 87, at 50.

<sup>91</sup> Hugo van der Merwe, *Delivering Justice during Transition: Research Challenges*, in *ASSESSING THE IMPACT OF TRANSITIONAL JUSTICE: CHALLENGES FOR EMPIRICAL RESEARCH* 122 (Hugo van der Merwe, Victoria Baxter & Audrey R. Chapman eds., 2009).

the proceedings at the ICTY, hoping to see justice delivered, war criminals return home, cheerful and welcomed by other Bosnians and the representatives of government, as war heroes. Such welcomes demonstrate the lack of political respect for war crime proceedings and for truths and verdicts established by the ICTY. In such cases, the acts of celebrating and mourning have become one, and the labels of war criminal and war hero have become intertwined.

The ICTY aimed to establish shared understanding about past wrongdoing and to deliver justice to victims. But even after its prosecutions, peaceful coexistence among the people of BH seems further away than ever. This may be due to the contested nature of the BH war, to the narrative that is still one of dissent and division, and which not only commemorates war, but also celebrates it. The truth about the BH war is still being made out of competing historical narratives that cannot be agreed upon. Rather than providing common ground, a truth which would bring Bosniaks and Serbs closer to "mutual agreements"<sup>92</sup> and would establish a new "collective memory,"<sup>93</sup> their trials before the ICTY have driven them even more apart. Even more, as Peskin and Boduszynski argue, the ICTY "empower[s] nationalists" and plays a part in reinforcing ethnonationalism.<sup>94</sup>

At the same time as long as hard-line Bosnians, politicians and war criminals are reinforcing, rather than bridging ethnic cleavages, genuine justice and reconciliation in BH will be difficult to achieve. Politicians in BH are divided along ethnic lines, representatives of people who live in ethnic ghettos and who continuously blame each other for past wrongdoings. The political elites in BH make no effort to appeal to cross-ethnic dialogue, but instead act to foster a society fragmented along ethnic lines. The notion of what justice means is shaped by one's allegiance to an ethnic group, and each group has a starkly different interpretation. Although it may never be possible to generate broad consensus as to whether justice has really been served, or what form of justice BH needs, it seems that the prevailing attitude in BH favors forgetting or denial, rather than justice.

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<sup>92</sup> JOHN TORPEY, *POLITICS AND THE PAST: ON REPAIRING HISTORICAL INJUSTICES* 6 (2003).

<sup>93</sup> MERWE, BAXTER & CHAPMAN, *supra* note 90, at 109.

<sup>94</sup> Victor Peskin & Mieczyslaw P. Boduszynski, *Balancing International Justice in the Balkans: Surrogate Enforcers, Uncertain Transitions and the Road to Europe*, 5 (1) *INTERNATIONAL JOURNAL OF TRANSITIONAL JUSTICE* 52 (2011).